GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

I.I.I&C Dept. – Development of Ramayapatnam Port – Cancellation of the Government Orders G.O.Ms.No.40, I&I Department dated 08.10.2008 &G.O.Ms.No.9, I&I Department dated 27.02.2009 - Amendment to the G.O.Ms.No.28, dt.11.09.2018 - Orders – Issued.

Industries, Infrastructure, Investment & Commerce (Port) Department

G.O.MS.No. 112 Dated: 30-12-2019

Read the following:

Ref: 1. G.O.Ms.No.264, TR&B department dated 15.10.1994
2. Concession Agreement dated 04.01.1997 between GoAP & M/s.KPCL
3. Revised Concession Agreement 17.09.2004 between GoAP &M/s. KPCL
4. G.O.Ms.No.40, I&I department dated 08.10.2008
5. G.O.Ms.No.9, I&I department dated 27.02.2009
6. G.O.Ms.No.28, E,I&I department dated 11.09.2018
7. Letter of KPCL NO. KPCL/E(I&I)-Ports/139 dated 10.11.2018
8. Letter of KPCL NO. KPCL/E(I&I)-Ports/1, dated 02.01.2019
9. Letter of KPCL NO. KPCL/E(I&I)-Ports/11, dated 24.01.2019
10. Letter No.D.O.No.PD-24018/38/2012-PD-IV dated 22.11.2013 of the Secretary, MoS, GoI.

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ORDER:

To leverage untapped potential of long seacoast, Government is determined to drive port based development in the State. The Government has identified certain strategic locations for development of ports and associated infrastructure. One such project is a deep water port at Ramayapatnam in Prakasam district. Major advantage of the port is its proximity to existing infrastructure such as National Highways and South Central Railway lines. Hinterland of the port is expected to spread over Andhra Pradesh, Telangana, Maharashtra and Karnataka thus providing ample trade opportunities to the proposed Port, which will help in the overall development of the State of A.P.

2. In the reference 1st read above, Govt. have issued orders for the limits of the Krishnapatnam Port. In the reference 2nd read above, a Concession Agreement was executed wherein amongst other clauses, it is provided that "GoAP can grant a facility for another port, to a private party, within 25kms on either side of port premises of Krishnapatnam port on the same terms and conditions contained in the Concession

Agreement, or develop by itself only when the Krishnapatnam port is fully utilised and no further expansion of this port is possible. The first right of refusal for such facility should be given to Krishnapatnam Port Company Ltd.,(KPCL)as set out in the MoU. This is however subject to agreements already entered into by GoAP".

3. In the Revised Concession Agreement (RCA) entered between GoAP and M/s KPCL dated 17.09.2004 in the reference 3rd read above, certain terms and conditions of the Original Concession Agreement were revised. This RCA, gave exclusivity to M/s KPCL as "GoAP hereby agrees that no party other than the concessionaire shall have the right to develop a new port, within 30 kms on either side of the Port limits, during the Concession Period under this Agreement".

4. In the reference 4th read above, Govt. have issued orders extending the exclusive rights of Krishnapatnam Port Company limited (KPCL) on northern side of the Krishnapatnam Port up to 30 Km south of Vadarevu Port limits being developed by VANPIC. Further the said G.O also provided for amendment of the Clause 3.8 of the RCA dated 17.09.2004 signed between GoAP & M/s KPCL and provided further that if any new port in the extended exclusive area is proposed by the Concessionaire in future, the concessionaire will be responsible for protecting the interest of fishermen and Project Displaced Families (PDF)/Project Affected Families(PAF) on par with other minor ports in the State of Andhra Pradesh by providing Resettlement & Rehabilitation (R&R) as per G.O.Ms.No.68, Irrigation & CAD(Project Wing – LA IV – R&R) Department, dated 08-04-2005 as amended from time to time and as per other relevant GOs issued in this connection, at his own cost. Followed by the same, orders were issued in reference 5th read above, amending the clause 3.8 relating to Exclusive limits of the Revised Concession Agreement dated 17.09.2004 signed between GoAP & M/s KPCL dt.17.09.2004extending the exclusive limits granted to KPCL as stated therein.

5. While in the process of taking up steps essential for setting up of a new port in the State of A.P, in the reference 10th read above, the Secretary, MoS, GoI, has addressed a letter to the Govt. of Andhra Pradesh stating that the Indian Ports Act1908, which governs the notification of both major port and non-major port does not provide for provision for any exclusivity right beyond the port limits. The act provides only for notification of Port limits. Therefore, the legal basis on which the exclusivity rights have been given for a vast area of 30 Kms on either side of the non-major port is not clear and may not be legally tenable.

6. In the reference read at 6th above, the Government while appreciating the requirement of de-notification of the extended exclusive limits, provided for obtaining consent of KPCL for such de-notification and for amending clause 3.8 of the RCA.

7. Pursuant to the Government orders read at 6th above, a letter dated 11.09.2018 was issued by the Government of AP to KPCL seeking their consent for de-notification of the extended exclusive limits in the larger interest of the State and the people of Andhra Pradesh.

8. In the reference 7th and 8th read above, M/s KPCL stated that for de-notifying the extended exclusive limits of Krishnapatnam Port, the Government must consider and compensate by granting the extension of Concession period by another 30years with the same rate of concession fee falling under the first slab for sharing gross income and thereafter extendable as per the terms and conditions of RCA.

9. In the reference 9th read above, KPCL sought to contend its rights with regard to development of a non-major port at Ramayapatnam by themselves by initiation due diligence and necessary studies. The KPCL also referred to the G.O cited at 5th read above claiming that KPCL has absolute rights to develop any new port within the notified exclusivity limits.

10. That on careful examination of the entire matter and the documents on record, it is observed that without any justifiable basis and merely only on the basis of request of the KPCL, the exclusivity limits granted to KPCL were abnormally extended vide G.Os at 4th and 5th read above, giving unbridled rights to the KPCL at the expense of National and state Interests, restraining and adversely affecting the rights of the Government in development of any new port within the extended exclusive limits. The said orders are also seen to be issued without consideration of the public policy which overrides any contracts entered by persons. Such consideration of public policy provided in Section 23 of the Indian Contract Act,1872 is also binding upon the Government, which is bound to consider the larger public interest while granting state largess. The grant of extended exclusivity rights which were issued by the G.Os 4th and 5th read above, is therefore not only without any justifiable basis but is also against public interest as the coast line of the Country is essentially a public property and is of national interest.

11. The contentions and requests of the KPCL raised in reference 7th to 9th read above cannot be considered in view of the forgoing reasons and since the very grant of extension of exclusivity limits vide 4th and 5th orders itself is contrary to public interest. The extension of the concession period etc., sought by the KPCL is not connected with the present subject of de-notification of the extended exclusive limits. The absolute right sought by the KPCL at 9th read above in the extended exclusive limit is not tenable and the same is not provided in the Concession Agreement and/or the Revised Concession Agreement executed between the GoAP and KPCL. At the time of entering into concession agreement and RCA, KPCL had voluntarily agreed for the exclusive limits provided therein and KPCL thus cannot claim the extended exclusive limits as a matter of right nor can it link it to the concession period. Thus viewed from any angle the

contentions and request of KPCL is not acceptable. Such right for development of the new Port by itself, claimed as by KPCL is not valid in law and is admittedly against larger public interest.

12. The State is the owner of the natural resources as a trustee of the people and although it is empowered to distribute the same, the process of distribution must be guided by the constitutional principles including the doctrine of equality and larger public good and such distribution should be in consonance with the principles of equality and public trust. This essentially implies that as custodian of public properties, whenever any violation of this basic tenet is observed, necessary corrective action is to be taken by the Government in larger public interest as in the present case. The concerns of larger public interest and the interest of development of port activity in the state this warrant a revisit of the matter.

13. It is further observed that the seeking of consent of the KPCL stated in G.O 6th read above for de-notification of the extended exclusive area issued vide G.Os 4th and 5th also does not arise. Further since the very extension of exclusive limit itself is not legal as stated above and moreover when the extension of the limit and the consequential amendment issued in 5th read reference was done by issuance of G.O, the Government has all the rights to review the matter and take decision in larger public interest.

14. Therefore, Government after careful examination and due consideration of the matter, hereby cancels the Government Orders issued in reference 4th and 5th read above, duly restricting the exclusive limits of Krishnapatnam Port as provided in the Revised Concession Agreement entered by GoAP and KPCL in the reference 3rd read above i.e restoring the clause 3.8 of RCA i.e "GoAP hereby agrees that no party other than the concessionaire shall have the right to develop a new port, within 30 kms on either side of the Port limits, during the Concession Period under this Agreement", and further also deletes the clause 6(i) of the G.O in the reference 6th read above in larger public interest and to take forward the development of Port at Ramayapatnam and to drive port based development in the State.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

RAJAT BHARGAVA
PRINCIPAL SECRETARYTO GOVERNMENT

To
The M/s Krishnapatnam Port limited, Registered office: Ground floor, Plot No.379Road No.10 Jubilee Hills, Hyderabad-500033.
The M/s Krishnapatnam Port limited, 1st floor, 48-9-17, Dwarakanagar, Visakhapatnam-530016.
The Ps to Prl. Advisor to Hon'ble C.M.

The CEO of the A.P.Maritime Board.
The Dy., CEO, A.P.Maritime Board.
Copy to:
The Secretary, Ministry of Shipping, Govt. of India, New Delhi -110001.
The OSD to Chief Secretary to Government.
The GA(Cabinet) Section.
The PS to Prl.Secy to Govt., III&C department
The Law Department.
SF/SC

//FORWARDED:: BY ORDER//

SECTION OFFICER